IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9354 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DR.SHEKHARRAMNARAYANAIRAN & 1 - Applicant(s)

Versus

STATEOFGUJARAT & 1 - Respondent(s)

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Appearance :

MR SAMIR J DAVE for Applicant(s) : 1 - 2.
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 13/10/2005

ORAL JUDGMENT

1.The petitioner / original accused has filed this petition under Section 482 of the Criminal Procedure Code praying for quashing and setting aside the FIR being C.R.

No. 15 of 1998 registered with Naranpura Police Station and Criminal Case No. 3283 of 1998 pending in the Court of learned Metropolitan Magistrate, Court No. 9, Ahmedabad.

2.This court has issued the notice on 18.08.2005. While issuing the notice, the court has observed that the matter was settled between the husband and the wife and both had separated voluntarily. The court had, therefore, granted ad interim relief and stayed the further proceedings of the Criminal Case No. 3283/98. Since the notice was not served on the respondent no.2 / original complainant, the court has passed further order on 28.09.2005 and the direct service was permitted to the petitioner. Pursuant to the said order, the respondent no.2 is served through a power of attorney holder as the respondent no.2 is staying at present in United Kingdom.

3.Pursuant to the said order, the power of attorney holder who is the mother of the respondent no.2 is personally present before the court. She has also shown the original power of attorney signed by the respondent no.2 in favour of her mother namely Sheila Motisinh Thakore. In the said power of attorney it is specifically stated that on her behalf the power of

attorney holder is entitled to remain present before all the necessary courts such as revenue courts, revenue offices, civil and criminal courts and she is entitled to do every legal work on behalf of the respondent no.2 and for the same purpose she is entitled to sign the necessary documents, applications etc. on her behalf.

4.Mr. Samir Dave, learned advocate appearing for the petitioner husband has submitted that the present respondent no.2 has filed an affidavit before the family court on 27.06.2005 wherein it is stated that she has been duly paid Rs.5 lakhs towards the amount of permanent alimony and the amount of maintenance for the child Siddharth by the petitioner and now nothing remains due and payable. It is further stated in the said affidavit that the custody of the said child Siddarth is with the petitioner no.2 i.e. present respondent no.2 and it will remain with her even after the dissolution of the marriage between the petitioners and there is no dispute regarding the same. It is also stated in the said affidavit that the present petitioner has undertaken to transfer the flat of his exclusive ownership situated at 10, Sunita Appt., Opp. Krupa Petrol Pump, Nr Parimal Crossing, Ambawadi, Ahmedabad in the name of the present respondent no.2 or in the name of any other person

nominated by the present respondent no.2 without any delay on his part. It is also stated in the said affidavit that the present petitioner as well as the respondent no.2 have mutually agreed to withdraw/compound/not press the cases filed and pending in different courts and at different stages including the Criminal complaint being C.R. No.15/98. Both of them have also given an undertaking before the court that they will fully cooperate till the matters between them are disposed off at the earliest.

5.Mr. Dave has further submitted that subsequent to this, the family court has passed a final decree on 07th October, 2005 in Family Suit No. 540 of 2005 whereby the decree of divorce by mutual consent was passed by the family court as also the terms of agreement which were arrived at between the parties and stated in the affidavit in reply which was filed in the family court.

6.In view of the settlement arrived at between the parties and in view of the final decree of divorce by mutual consent passed by the family court and in view of the fact that the mother and power of attorney holder of the respondent no.2 is present before the court and is identified by Ms. Maya S Desai, the learned advocate who

is appearing before the Family court, on her behalf the court takes into account the settlement arrived at between the parties and in view of the settled legal position and the disputes which are of civil nature, it is not necessary to send the parties to face criminal trial. Mr. Dave has relied on the decision of the Hon'ble Supreme Court in the case of B.S. Joshi v State of Haryana 2003(4) SCC 675 wherein the Hon'ble Supreme Court has said that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power. Thus, the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.

7.Looking to the facts and circumstances of the case and following the judgement of the Hon'ble Supreme Court which is relied upon by the petitioner, the court is of the view that this is a fit case where the court has to exercise its power under Section 482 of the Criminal Procedure Code and quash the complaint. Accordingly

FIR being C.R. No. 15 of 1998 registered with Naranpura Police Station and process issued in Criminal Case No. 3283 of 1998 pending in the Court of learned Metropolitan Magistrate, Court No. 9, Ahmedabad are hereby quashed and set aside.

8.Rule made absolute without any order as to costs.

(K.A. PUJ, J.)

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